The next day, April 24, 2003, *The Dallas Morning News* reported that Attorney General Greg Abbott cleared the way Wednesday [April 23] for the Legislature to redraw the state's congressional district lines but said lawmakers "cannot be compelled to do so." P. 7A. On April 24, 2003, as well, Mr. DeLay visited Austin for Speakers Reunion Day and met with Texas officials. On April 25, 2003, the *Austin American-Statesman* reported in part:

> While Democrats welcomed an opinion from Texas Attorney General Greg Abbott that the Texas Legislature does not have to draw new congressional districts, the Republican majority leader of the U.S. House said it should be done anyway.
>
> . . .
>
> "I think it's the responsibility of the Legislature," said U.S. House Majority Leader Tom DeLay, R-Sugar Land. "The constitution's very specific as to who is supposed to do redistricting and apportionment – not judges."
>
> On cue, House Redistricting Committee Chairman Joe Crabb, R-Atascocita, said he'll hold a public hearing next week on the topic.
>
> . . .
>
> DeLay said he met with Gov. Rick Perry, Lt. Gov. David Dewhurst and House Speaker Tom Craddick, R-Midland. Dewhurst, who presides over the Senate, said senators would consider bringing a redistricting bill to the floor if the House passes it.
>
> DeLay said Craddick told him that he will move the bill through the House.

> But Craddick said, "It's up to the House, and I don't know how the House really feels about it." Although he supports it, he said, "I'm not pushing it."

*Austin American-Statesman*, April 25, 2003, Metro/State Section, p. B6.

On May 6, 2003, *The Houston Chronicle* reported that at least two redistricting maps were under consideration, one submitted by Rep. Crabb and one by Rep. King. "King offered the map to the House Redistricting Committee after three days of public testimony on" Rep. Crabb's plan. "King drew the map with the help of Jim Ellis, a political aide to DeLay. A DeLay-established political committee – Texans for a Republican Majority – raised almost $1.5 million to help Republicans win a majority in the Texas House last year." *The Houston Chronicle*, May 6, 2003, Section A, p. 1.

On May 12, 2003, due to their view that redistricting was being controlled by Mr. DeLay, 55 Democratic House members boycotted the legislative session and went into hiding in Ardmore, Oklahoma. In an AP story, *The New York Times* reported that "Democratic lawmakers brought the Texas House to a standstill today by going into hiding and state troopers and the elite Texas Rangers were ordered to track them down . . . It occurred as the chamber was scheduled to debate a Congressional redistricting plan the Democrats opposed." *The New York Times*, May 13, 2003, Section A, p. 24. Carl Hulse, a *Times* reporter, wrote that "Mr. DeLay, majority leader of the United States House of Representatives and former state legislator who loves the rough and tumble of Texas politics has touched off a rumble in his home state with his push for a new districting map that would almost certainly hand Republicans four or

more additional seats in Congress, at the expense of Democrats." *The New York Times*, May 15, 2003, Section A, p. 1.

Efforts to force the House members back to Texas failed. In time, determinations were made that neither the Texas Rangers nor the Texas Department of Public Safety had jurisdiction to force the members back to Texas. *The New York Times*, July 12, 2003, Section A, p. 7 (AP story). A Department of Homeland Security aircraft tracked the legislators at the request of the Department of Public Safety and, according to some accounts, with the assistance of Mr. DeLay's staff. However, a true account of the matter remains unknown, pertinent records at the Department having been ordered destroyed. *The New York Times*, May 22, 2003, Section A, p. 16.

The Democratic House boycott succeeded in blocking consideration of the redistricting plan during the regular 2003 legislative session. However, the governor called three special sessions to secure eventual passage. In the first special session, the Lieutenant Governor rescinded the rule that a two-thirds majority was needed for passage of redistricting legislation. In the second special session, eleven Democratic senators left for Albuquerque to deprive the Senate of the constitutionally-mandated 21-member quorum. *See The New York Times*, July 29, 2003, Section A, p. 18 (AP story). In the third special session, "Mr. DeLay spent most of [a] week in Austin breaking the deadlock between state House and Senate GOP negotiators." *The Dallas Morning News*, October 16, 2003, Texas Section, p. 6A.

In addition to the media reports, amicus respectfully adverts to Exhibit 136 submitted by the Jackson Plaintiffs

in the District Court. The exhibit is a summary of memoranda and messages from Mr. Jim Ellis, an aide to Mr. DeLay. It tellingly illustrates the heavy influence, if not control, exercised by the Majority Leader on the redistricting process and upon its key participants, the Governor, the Lieutenant Governor, and the Speaker of the House. It shows an intent to exclude identified incumbent Democrats from the House and suppress their viewpoints.

The above summary, amicus submits, is sufficient to warrant a judicial inquiry whether the redistricting process was indeed heavily influenced, if not controlled, by Mr. DeLay. Adam Cohen, writing in *The New York Times*, quoted Mr. DeLay as saying, "I'm the majority leader, and I want more seats." *The New York Times*, May 27, 2003, Section A, p. 24.

In addition to the intrusion of Mr. DeLay and his aides, there are other troubling aspects about the redistricting process. There are a significant number of reports that there was not timely notice of, and open and on-the-record hearings on, the plans under serious consideration. Under the expedited briefing schedule, amicus has not had the opportunity to research and gather what appear to have been several operative deficiencies.

In the view of amicus, the reports and exhibit described above warrant an opportunity for Plaintiffs to challenge the process and for the District Court to rule on its fairness. If the Court reverses on grounds other than those advanced by Plaintiffs, which would declare mid-decade redistricting unlawful, then a remand would be appropriate to give Plaintiffs the opportunity to present evidence about Mr. DeLay's role and other defects in the redistricting process.

Amicus reiterates his view that this matter raises important Article I structural concerns that impinge upon the legitimacy, and the perception of legitimacy, of governance. Amicus respectfully submits that the Court should continue its vital role in promoting the fairness of districting.

## CONCLUSION

Amicus respectfully submits that this Court should continue its role in reviewing challenges to unfairly partisan gerrymandering; it should hold that the process of Congressional districting and redistricting should not be dictated by incumbents and other federal officials; and should it reverse on grounds other than the unconstitutionality of mid-decade redistricting, it should remand this case to the District Court to determine whether the 2003 Texas redistricting process was heavily influenced, if not dictated, by the United States House Majority Leader and whether the process was otherwise "fair and adequate."

Respectfully submitted,

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No. 05-276

In The

# Supreme Court of the United States

EDDIE JACKSON, *et al.*,

*Appellants,*

v.

RICK PERRY, *et al.*,

*Appellees.*

**On Appeal From The**
**United States District Court**
**For The Eastern District Of Texas**

## BRIEF FOR *AMICUS CURIAE* FORT WORTH-TARRANT COUNTY BRANCH NAACP IN SUPPORT OF APPELLANTS

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TABLE OF CONTENTS


| | Page |
|---|---|
| INTEREST OF THE *AMICUS CURIAE* | 1 |
| SUMMARY OF ARGUMENT | 1 |
| ARGUMENT | 3 |
| I. African-American Leaders In Fort Worth Strongly Voiced Their Opposition To The Mid-Decade Redistricting Of 2003 | 3 |
| II. Republican Legislative Leaders And Political Operatives Knowingly Dismantled The 24th Congressional District As An Effective African-American Opportunity District Anchored By African-American Voters In Fort Worth | 4 |
| III. U.S. Justice Department Analysts, As Well As The Expert Representing The State Of Texas, Determined That The 24th Congressional District Was An Effective African-American Opportunity District Under Plan 1151C, But That African-American Voters Would Be Ineffective Under The 2003 Plan (1374C) | 7 |
| IV. Fort Worth African-American Control Of Congressional Elections Was Dismantled To The Extent That Even If Every Single One Of The Registered Voters In The Heavily African-American Fort Worth Precincts Turned Out To Vote In An Election And All Cast Their Ballots For The Same Candidate Of Choice, That Candidate Would Still Lose | 10 |
| CONCLUSION | 15 |

## TABLE OF AUTHORITIES

Page

CASES:

*Johnson v. DeGrandy*, 512 U.S. 997 (1984) ..... 10

*Thornburg v. Gingles*, 478 U.S. 30 (1986) ..... 10

STATUTES:

Voting Rights Act, 42 U.S.C. §1973c ..... 4

MISCELLANEOUS SOURCES:

Department of Justice Section 5 Recommendation Memorandum, December 12, 2003, found at: http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf (visited January 5, 2006) ..... 4, 6, 7, 8, 9, 10

Dan Eggen, *Justice Staff Saw Texas Districting As Illegal*, The Washington Post, December 2, 2005, at A1 ..... 7

Robert T. Garrett and Gromer Jeffers, Jr., *Will Third Time Be Remap Charm?*, Dallas Morning News, July 26, 2003 ..... 3

Robert T. Garrett and Pete Slover, *Input Given At Remap Hearings Ignored*, Dallas Morning News, December 18, 2003 ..... 3

Jeff Mosier, *East FW Is Lined Up vs. GOP's Redistricting May Leave Area At Mercy Of Northern Suburbs, Residents Say*, The Dallas Morning News, December 18, 2005 ..... 14

Jay Root and Jack Douglas, Jr., *Redistricting Map Goes Back to Drawing Board*, Fort Worth Star Telegram, July 3, 2003 ..... 5

TABLE OF AUTHORITIES – Continued

Page

Jay Root and Jack Douglas, Jr., *Map's New Lines Would Spare Frost*, Fort Worth Star Telegram, July 4, 2003 ..... 5

## INTEREST OF THE *AMICUS CURIAE*

*Amicus Curiae* Fort Worth-Tarrant County Branch NAACP is a local chapter of the National NAACP. It shares the mission of the national NAACP: to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination.[1]

## SUMMARY OF ARGUMENT

Before the Texas Legislature enacted a mid-decade congressional redistricting plan in 2003, Texas Congressional District 24 performed as an effective minority district with African-American voters providing the controlling voice. CD24 leaned strongly Democratic in its pre-2003 configuration and the vast majority of African-Americans in Fort Worth vote Democratic. Texas State House Representative District 95, now held by Marc Veasey, lay almost entirely within Congressional District 24. In 2003, the Texas Legislature splintered Congressional District 24 among five new overwhelmingly Anglo or white districts. This muffled to a meaningless whisper the previously dominant voice of African-Americans, especially those residing in State Representative District 95, in electing their congressional representative, leaving them no impact at all on Congressional elections.

[1] This brief is filed with the written consent of all parties. No counsel for any party authored this brief in whole or in part, nor did any person or entity other than the *amicus* or their counsel, make a monetary contribution to the preparation or submission of this brief.

We submit this brief to demonstrate the following points:

- African-American community leaders in Fort Worth strongly voiced their opposition to the mid-decade congressional redistricting imposed by the Texas Legislature in 2003;
- Texas state officials, under pressure from national political leaders in Washington, knowingly dismantled the 24th Congressional District as an effective minority opportunity district anchored by African-American voters in Fort Worth;
- A team of U.S. Justice Department professionals, as well as experts representing the State of Texas, correctly determined that the 24th Congressional District was an effective African-American opportunity district under the pre-2003 plan (plan 1151C), and further correctly concluded that African-American voters would not be able to elect their candidate of choice under the new plan enacted in 2003 (plan 1374C);
- Fort Worth African-American control over congressional elections was reduced to the extent that even if all of the registered voters in the Fort Worth African-American precincts cast their ballots for the same candidate, they would still not be able to elect their candidate of choice to Congress and would have no meaningful impact on congressional elections.

## ARGUMENT

### I. African-American Leaders In Fort Worth Strongly Voiced Their Opposition To The Mid-Decade Redistricting Of 2003.

Fort Worth African-American leaders joined other Texans statewide in voicing their opposition to mid-decade redistricting. At redistricting hearings held by the Texas Legislature across the state in 2003, Texans overwhelmingly opposed redrawing congressional district lines. The Dallas Morning News reported, " . . . at seven meetings the Senate held across the state, 89 percent of the 2,620 witnesses opposed any change in the congressional maps drawn by federal judges two years ago, after the Legislature failed to produce a plan." (Robert T. Garrett and Gromer Jeffers Jr., *Will Third Time Be Remap Charm?* Dallas Morning News, July 26, 2003).

Fort Worth African-American leaders, sharing the interest of the *amicus curiae*, joined in this opposition and testified before the Legislature as well. Long-time civil rights activist and community leader Deralyn Davis, for example, told the Legislature: "I feel like a nonperson. I feel like I don't matter, because I was taken from where I had some input and put where I'm nobody." (Robert T. Garrett and Pete Slover, *Input Given At Remap Hearings Ignored*, Dallas Morning News, December 18, 2003). Similarly, Roy Brooks, a long-time African-American community leader and current County Commissioner in Tarrant County, testified at trial that including the southeast Fort Worth community into new CD26 would result in black voters having "virtually no chance to have any impact on who the Congressperson is in that district." (Tr., Dec. 12, 2003, 3:00 p.m., at 43-44 (Brooks)).

In addition, former State Representative Garfield Thompson and then Fort Worth City Councilman Ralph McCloud, both African-American, testified against redistricting and raised fears that African-American voting strength in Fort Worth would be lost in the 2003 map. Ultimately, 53 of 55 minority legislators in Texas agreed and voted against the redistricting map.

## II. Republican Legislative Leaders And Political Operatives Knowingly Dismantled The 24th Congressional District As An Effective African-American Opportunity District Anchored By African-American Voters In Fort Worth.

Republican legislative leaders in the Texas State House and State Senate were aware that redrawing congressional district lines could threaten the voting strength of Fort Worth African-American voters and would violate their rights under the Voting Rights Act. In fact, both the Texas House and the Texas Senate passed redistricting plans that Department of Justice professionals, who reviewed the map pursuant to the preclearance provisions of the Voting Rights Act, 42 U.S.C. §1973c, concluded there were "non retrogressive alternatives." (United States Department of Justice "Section 5 Memorandum." Online Posting December 2, 2005. <http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf> at 35, December 12, 2003.) However, under intense lobbying from Washington, DC, particularly Congressman Tom DeLay's emissary, Jim Ellis, the House and Senate Republican leadership collapsed under the pressure and, in conference, agreed upon the current plan.

Republican State Representative Phil King was the author of the congressional plan that was passed by the

Texas State House and sent to conference (H.B. 3 PLAN 1268C). In constructing his House plan, Rep. King emphasized the need to retain the 24th Congressional District as a minority opportunity district in order to avoid violating the Voting Rights Act. The Fort Worth Star Telegram reported:

> Rep. Phil King, R-Weatherford, said he probably goofed when he redrew the district represented by U.S. Rep. Martin Frost, D-Arlington. The map that King had proposed would take predominately minority areas in southeast and north Fort Worth and put them into a Republican district dominated by Denton County. King had hoped to have the map approved by the House Committee on Redistricting on Wednesday, with a vote by the full House as early as Monday. But he withdrew the map from consideration until it is modified.

(Jay Root and Jack Douglas, Jr., *Redistricting Map Goes Back To Drawing Board*, Fort Worth Star Telegram, July 3, 2003.)

Rep. King instead abandoned his plan to dismantle CD24 and chose instead to withdraw his map and submit a new map. The new King map maintained CD24 as an effective opportunity district for African-American voters. King did this, he said, "just to make sure that there was no possibility that we were in any way violating or going against the spirit of the Voting Rights Act." (Jay Root and Jack Douglas, Jr., *Map's New Lines Would Spare Frost*, Fort Worth Star Telegram, July 4, 2003.)

King's concerns were also detailed in a decisional memorandum prepared by Department of Justice professionals

conducting a preclearance review of the Texas plan under the Voting Rights Act. Their memorandum stated:

> "Some Anglo Republican legislators also appear to view Benchmark 24 as a district where African-American voters have an ability to elect. State Rep. Phil King (A), a member of both the House Redistricting Committee and the conference committee, expressed concern for decreasing minority electoral strength in Benchmark 24. In his recent deposition, he characterized the district as a "minority district" which legal counsel had advised him to approach "with caution" due to concerns for Voting Rights Act compliance. King Dep. at 79, 112-17. In a statement made to the redistricting committee, he commented on why he had withdrawn his original plan: "[I]n the hopes of trying to respond to the concerns that [Rep. Richard Raymond (Hispanic)] and others voiced and in the hope of trying to expedite the DOJ preclearance process, I moved [District] 24 back into its original district."

(United States Department of Justice "Section 5 Memorandum." Online Posting December 2, 2005. <http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf> at 15-16, December 12, 2003.)

The DOJ memorandum also referenced the concerns of former Republican Senator and Lt. Governor Bill Ratliff. The report stated that Ratliff "recall[ed] concerns expressed during the redistricting process for the preservation of the ability that Benchmark 24 provided to minority voters to elect a candidate of choice." (*Id.* at 35.)

However, the state legislators, including Rep. Phil King, were pressured by then U.S. House Majority Leader

Tom DeLay to abandon both the House and Senate alternatives and, instead, enact a plan eliminating CD24 as a minority district. In memos to Congressman DeLay written by Jim Ellis, his representative in Austin, Ellis made it clear that he and DeLay were aware of the voting rights risks involved in eliminating CD24. In an October 5th, 2003 memo to DeLay, Ellis wrote, "The pre-clearance and political risks are the delegation's and we are willing to assume those risks but only with our map." (Jackson Plaintiffs' Ex. 136.)

## III. U.S. Justice Department Analysts, As Well As The Expert Representing The State Of Texas, Determined That The 24th Congressional District Was An Effective African-American Opportunity District Under Plan 1151C, But That African-American Voters Would Be Ineffective Under The 2003 Plan (1374C).

On December 2nd, 2005, The Washington Post made public a previously unreleased memorandum prepared by a unanimous team of eight Department of Justice voting rights experts assigned to evaluate the 2003 redistricting plan approved by the Legislature. They reviewed the plan under the authority of Section 5 of the Voting Rights Act. (Dan Eggen, *Justice Staff Saw Texas Districting As Illegal*, The Washington Post, December 2, 2005 at A1.) The DOJ professional staff determined that the State's 2003 redistricting plan reduced the number of effective minority opportunity districts from eleven to nine and specifically determined that the 24th District had been eliminated as an effective African-American opportunity district. In their analysis, the career professionals determined "In the benchmark [plan 1151C], black voters have the ability to

elect the candidates of their choice in 18, 24, 25, and 30. In the proposed plan [plan 1374C] black voters can no longer elect their candidate of choice in proposed 24. The loss of Benchmark 24 has not been offset." (United States Department of Justice "Section 5 Memorandum". Online Posting December 2, 2005. <http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf> at 31, December 12, 2003.)

Also, the expert retained by the State of Texas to evaluate its map in 2003, Professor Keith Gaddie, determined that African-American voters had an effective opportunity to elect the candidate of their choice in Congressional District 24 under the pre-2003 plan, but concluded that they lost that opportunity under its new configuration. During his deposition, Professor Gaddie testified:

> Q. And did you, on occasion, advise Mr. Taylor [State's attorney] that the version [1374C] of District 24 drawn on a map would not perform [for minority voters]?
>
> A. Yes
>
> * * *
>
> Q. And did you comment of the effect on minorities of the elimination of District 24 as a Democratic-leaning district?
>
> A. Yes.
>
> Q. What did you say about that?
>
> A. Well, my commentary at that time was the same as my comment to the State Senate Committee, which is that District 24 was a district